IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 27-04-2007

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THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Crl.R.C.No. 1483 of 2004

Bathirammal ... Petitioner

-vs-

1. K.Kalyanasundaram

2. T.R.Eswaran

3. R.Rajendran

4. The state of Tamil Nadu
Inspector of Police /
Economic Enforcement Wing,
Coimbatore. ... Respondents

Criminal Revision filed against the order, dated 26.04.2004, passed in Crl.M.P.No.1 of 2004 in S.C.No.292 of 2003 on the file of the Additional District and Sessions Judge cum Fast Track Court No.III, Coimbatore.

For petitioner : Mr.S.Subbiah

For respondents : Mr.S.Sasikumar for RR1 to R3
Mr.Hasan Mohamed Jinnah
Govt. Advocate (Crl.side) for R4

O R D E R

This Criminal Revision has been preferred against the order, dated 26.04.2004 passed in Crl.M.P.No.1 of 2004 in S.C.No.292 of 2002 on the file of the Additional Sessions Judge / FTC No.III, Coimbatore.

2. It is seen that the petitioner herein Tmt.Pathirammal filed a private complaint against the respondents 1 to 3 / accused before the fourth respondent under Section 200 of the Code of Criminal Procedure, for the alleged offence under Section 306 r/w 511 IPC and under Sections 4 and 9 of Tamil Nadu Prohibition of Charging Exorbitant Interest Ordinance, 2003 and Sections 4 and 9 of the said ordinance r/w Section 511 IPC.

3. The petitioner and her husband Thimmayan had borrowed amount from the respondents 1 to 3. The husband of the petitioner herein had

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borrowed loan from them on 03.04.2000. According to her, she had entrusted certain documents relating to the property to the respondents 1 to 3 towards security for the amount borrowed. She had also entered into an agreement for the sale of property with the second respondent for a consideration of Rs.2,00,000/- and received an advance of Rs.1,50,000/- and also executed power of attorney authorizing 3rd respondent to sell the property on her behalf. Subsequently, the same was sold by the third respondent to the second respondent. According to the petitioner, she had discharged the loan on 25.05.2001, but the respondents did not return the documents entrusted to them and that the respondent 1 to 3 were threatening the petitioner with dare consequences, apart from that the respondents 1 to 3 are inducing the petitioner to commit suicide, if the amount is not repaid. It is seen from the records that the court below after receiving the evidence of the husband of the petitioner herein, Thimmaiyan (P.W.1) and two other witnesses committed the case before the court of Sessions at Coimbatore under Section 209 Cr.P.C and subsequently, it was made over to the Additional Sessions Court / FTC No.III, Coimbatore for trial. On behalf of the respondents 1 to 3, it was pleaded before the trial court that no prima facie case has been made out against them and pleaded for discharge.

4. Learned Additional Sessions Judge / FTC No.III, Coimbaotre, after considering the arguments advance by both sides and the materials available before the court, has held that there is no sufficient grounds for proceeding against the respondents 1 to 3 herein, who were accused in the said case and accordingly, discharged them from the case, against which, this Criminal Revision has been preferred by the petitioner herein.

5. On a perusal of the case records, it is seen that the revision petitioner / complainant never entered into the witness box to depose her case, for the reasons best known to her.

6. As contended by the learned counsel for the respondents, it is only a civil dispute between the petitioner herein and her husband on the one side and the respondents 1 to 3 on the other side. The petitioner has admitted that Thimmaiyan had borrowed money from the respondents 1 to 3 herein and she had entered into an agreement for the sale of property to the second respondent, for a sale consideration of Rs.2,00,000/- and received an advance of Rs.1,50,000/- and also executed power of attorney, authorizing the third respondent to sell the property on her behalf. Based on the power of attorney, the third respondent executed a sale deed in favour of the second respondent. Though the petitioner has stated that the amount borrowed by her was returned back, for which no evidence has been produced. Though the revision petitioner / complainant has stated that she was induced by the respondents to commit suicide, for which there is no evidence, even the petitioner has not deposed any evidence to establish the allegation leveled against the respondents herein.

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7. Learned counsel appearing for the respondents 1 to 3 contended that the charges framed against the respondents under Section 306 r/w 511 IPC and under Sections 4 and 9 of Tamil Nadu Prohibition of Charging Exorbitant Interest Ordinance, 2003 and Sections 4 and 9 of the said ordinance r/w Section 511 IPC are legally not sustainable. In support of his contention, the learned counsel for the respondents 1 to 3 relied on the following decisions:

1. Niranjan Singh, K.S. Punjabi vs. Jitendta Bhimraj Bijjaya, 1991 SCC (Cri) 47
2. Union of India vs. Prafulla Kumar Samal, 1989 SCC (Cri) 609
3. Dilawar Balu Kurane vs. State of Maharashtra, JT 2002 (1) SC 6
4. Govindaraja Pillai, M. vs. Thangavelu Pillai, 1983 L.W. (Cri) 23
5. A.P.Fernandes vs. Rabindra, 1996 Cri.L.J. 622
6. Satvir Singh vs. State of Punjab, 2002 SCC (Cri) 48

8. In the decision, Niranjan Singh, K.S. Punjabi vs. Jitendta Bhimraj Bijjaya, reported in 1991 SCC (Cri) 47, the Hon'ble Apex Court has ruled that under Section 227 of the Code of Criminal Procedure, the duty is cost upon the judge to apply his mind to the material on record and if on examination of the record, he does not find sufficient ground for proceeding against the accused, he must discharge him. Similarly, if the judge comes to the conclusion that there is sufficient ground to proceed, he will frame charge under Section 228, if not he will discharge the accused. As per the decision, Section 227 was introduced in the Code to avoid waste of public time over cases which did not disclose a prima facie case and to save the accused from avoidable harassment and expenditure.

9. In the decision, Satvir Singh vs. State of Punjab, reported in 2002 SCC (Cri) 48, the Hon'ble Apex Court has ruled that Section 511 makes attempt to commit an offence punishable. The offence attempted be one punishable by the Code with imprisonment. The conditions stipulated in the provision for completion of the said offence are : (1) The offender should have done some act towards commission of the main offence (2) Such an attempt is not expressly covered as a penal provision elsewhere in the Code. Thus, .attempt. on the part of the accused is the sine qua non for the offence under Section 511.

10. Here in this case, based on the complaint given by the revision petitioner, charges were leveled under Section 306 r/w 511 IPC and under Sections 4 and 9 of Tamil Nadu Prohibition of Charging Exorbitant Interest Ordinance, 2003 and Sections 4 and 9 of the said ordinance r/w Section 511 IPC.

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11. In the light of the ruling of the Hon'ble Supreme Court referred above, to attract Section 511, the respondents / accused should have done some act towards commission of the main offence, namely, inducing the petitioner herein to commit suicide, for which there is no prima facie material. Similarly, to attract Section 4 & 9 of Tamil Nadu Prohibition of Charging Exorbitant Interest Ordinance, 2003 and Sections 4 and 9 of the said ordinance r/w Section 511 IPC, no prima facie material

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has been produced by the revision petitioner.

12. As contended by the learned counsel for the respondents, the complaint itself should be construed as abuse of process of law, as there is no prima facie material or evidence to prosecute the respondents under the aforesaid provisions of law.

13. It is seen that the trial court has applied its mind to the material on record and held that there was no sufficient ground for proceeding against the accused, hence discharged them, as per Section 227 of the Code of Criminal Procedure. On the facts and circumstances, I am of the considered view that there is no error or infirmity in the impugned order passed by the court below to be interfered with and accordingly, the criminal revision fails.

14. In the result, the Criminal Revision is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

tsvn

To

1. The Additional District and Sessions Judge
   cum Fast Track Court No.III, Coimbatore.

2. The Inspector of Police /
   Economic Enforcement Wing,
   Coimbatore.

3. The Public Prosecutor
   High Court of Madras, Chennai.

+ 1 CC To Mr. S.Subbiah, Advocate SR NO.29598

+ 1 CC To Mr. S.Sasikumar, Advocate SR NO.29896

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